Code and secondly, under section 325 of the same Code. He framed a charge under section 457 of the Penal Code read together with section 34 of the same Code against the 3 other respondents. He proceeded to call for the defence and eventually he found 1st respondent not guilty on the first charge (section 457). He reduced the 2nd charge (section 325) to section 335 of the Penal Code and totally disregarding the provisions of section 159 of the Criminal Procedure Code found him guilty on the amended charge, convicted him and sentenced him to a fine of $500 in default 5 months' imprisonment. As regards the other 3 respondents he found them not guilty on the charge framed by him and acquitted and discharged them. The Public Prosecutor appealed against his order in respect of the 4 respondents.

In my opinion the conviction in respect of the first respondent under section 335 of the Penal Code is an illegality and not an irregularity which can be cured under section 422 of the Criminal Procedure Code. Section 159 of the Criminal Procedure Code makes it mandatory on the part of the Court to call upon the accused to plead to the altered charge. This was not done in this case.

I would like to comment on the powers of the Court under section 158 of the Criminal Procedure Code. Section 158 of the Criminal Procedure Code empowers a Court to "alter or add to any charge at any time before judgment is pronounced". It is permissible under that section to alter the charge after the defence has been called but it is a course which should be adopted only with great caution. I think a safer and better course would be to follow the provisions of section 173(h), (i) and (j) of the Criminal Procedure Code. It is quite clear from these 3 sub-sections that a President or a Magistrate should make any alteration or amendment to the charge only at the close of the case for the prosecution.

The depositions of the prosecution witnesses at the preliminary inquiry show evidence of housebreaking and causing grievous hurt. Even the President who presided at the preliminary inquiry as a Magistrate came to this finding when he framed the charge against 1st respondent under section 457 of the Penal Code. Unfortunately the President appeared to confuse section 457 with section 459 of the Penal Code. He framed the charge substantially in terms of section 459 of the Penal Code but inserted section 457 instead of section 459 as the punishable section. Section 141 of the Criminal Procedure Code read together with section 142, in my opinion, would simply mean that all a Magistrate at a preliminary inquiry has to do is to see whether there is any evidence of any offence which is triable in the High Court and if there is he is in duty bound to commit the accused person for trial. It is not his duty to weigh the evidence as if he was trying the case. His duty is either to commit the accused for trial or to discharge him. If he thinks there are peculiar difficulties or circumstances connected with the case he should transmit the depositions to the Public Prosecutor under section 140(iv) of the Criminal Procedure Code. In this case there is some evidence of housebreaking. Deponent No. 1 stated he saw the 4 respondents entering the shop. Deponent No. 1 went on to say that no one could open the door from the outside without breaking the latch. Deponent No. 4, a police constable, stated that he saw the door of the shop had been broken. He explained that the hinges to the door had come off. The medical evidence was that there was a fracture of the 3rd phalanx of the index finger of the right hand of Ng Nga Chang, fracture of the ulna bone of Lim Ah Mui and linear fracture lower ¼" of the right ulna of Tan Kim Kang.

On the above grounds I allow the appeal, reverse the order of the President and direct that the 4 respondents be committed for trial under section 459 of the Penal Code.

Appeal allowed.

Pleader: *Maidin bin Mohamed Ibrahim.*

Re KARUPPIAH

[O. Bk. J. (Gill J.) September 18, 1962]

[K.L. — In Bankruptcy No. 8 of 1961]

Bankruptcy — Landlord and tenant — Bankruptcy of tenant — Disclaimer of lease by Official Assignee — Notice under Bankruptcy Rules, 1921, r.259 — Whether landlord entitled to possession — Bankruptcy Ordinance, 1959, s.59(6) — Whether bankrupt's wife and children have equitable interest.

Landlord and tenant — Bankruptcy of tenant — Disclaimer of lease by Official Assignee.

The Official Assignee having served notices under Bankruptcy Rules, 1921, r.259, on the landlord disclaiming the lease in respect of premises occupied by the bankrupt, the landlord in this application sought to recover vacant possession thereof. On behalf of the bankrupt it was urged that (1) leave of the court was necessary to disclaim the lease; (2) rule 259 had no application as the 1921 Bankruptcy Rules were not rules made under the Bankruptcy Ordinance, 1959; (3) the landlord was not entitled to possession on this application in these proceedings but he should bring a separate action; and (4) the premises here was the matrimonial home of the bankrupt and his wife, and children and consequently the wife had an equitable interest in the tenancy.

Held: (1) the disclaimer of the lease in this case by the Official Assignee by notices issued under rule 259 of the Bankruptcy Rules, 1921, was a proper disclaimer in law as under the ordinary rules of interpretation the old Bankruptcy Rules remain in force until new rules are made under the new Ordinance;

(2) on his bankruptcy the rights of the bankrupt under the contract of tenancy passed to the Official Assignee and the bankrupt became a licensee of the Official Assignee, which licence was terminated by the disclaimer and whereupon the bankrupt became a trespasser. The court has jurisdiction to make an order under section 59(6) of the Bankruptcy Ordinance for delivery of possession of premises which have been disclaimed by the Official Assignee;

(3) the right of the bankrupt's wife and children to remain on the premises flows from and is tied up with the bankrupt's right to remain on the premises.

Cases referred to:—

(1) *Ramasamy Pillai* v. *Meyappa Chettiar & Anor.* [1955] M.L.J. 105.
(2) *Meenachi Sundram & Anor.* v. *Kunjan Pillai* [1955] M.L.J. 128.
(3) *Re Hyams* [1923] B. & C.R. 173.
(4) *Bendall* v. *McWhirter* [1952] 1 All E.R. 1307.
(5) *Feris* v. *Weaven* [1952] 2 All E.R. 233.
(6) *Short* v. *Short* [1960] 3 All E.R. 6.
(7) *Cobb* v. *Cobb* [1955] 2 All E.R. 696 at p. 698.

BANKRUPTCY.

Henry Cheah for the applicant.

Richard Talalla for the bankrupt.

Gill J: This is an application by way of motion for an order that the bankrupt in these proceedings, A. Karuppiah, do deliver up vacant possession of the premises at 27, Batu Tiga Road, Klang, to the applicant, Ong Phing Khing (f), who is the proprietor and landlord of the said premises.

The facts relevant to the application may be summarised as follows. A. Karuppiah became a tenant of the premises in 1938 and he has been in occupation ever since. The premises became subject to the various pieces of legislation on rent control culminating in the Control of Rent Ordinance, 1956. Bankruptcy proceedings were commenced against Karuppiah on a creditor's petition dated the 1st of March, 1961, and filed in this Court on the 3rd of March, 1961. The petition came up for hearing on 17th April, 1961, when a receiving order was made against him. Subsequently he was adjudicated bankrupt by an order of this Court dated the 21st day of August, 1961.

On 22nd August, 1961, the Official Assignee served on the applicant a notice of intention to disclaim the lease in respect of the premises. He followed it up by serving on the applicant a notice of disclaimer dated the 2nd of September, 1961. It would seem clear that these notices were served on the applicant under the provisions of rule 259 of the Bankruptcy Rules, 1921, and as the applicant did not serve a notice upon the Official Assignee requesting him to refer the matter to the Court, the Official Assignee did not consider it necessary to obtain the leave of the court to disclaim the lease. It was argued on behalf of Karuppiah by Mr. Richard Talalla, who appeared for him with the permission of the Official Assignee, that leave of the court is necessary except in any case which may be prescribed. He argued that rule 259 of the Bankruptcy Rules had no application as these were not rules made under the Bankruptcy Ordinance No. 20 of 1959. The short answer to that is that under the ordinary rules of interpretation the old Bankruptcy Rules remain in force until new rules are made under the new Ordinance. In my opinion, therefore, the disclaimer of the lease in this case by the Official Assignee was a proper disclaimer in law.

The legal position as regards these premises may be stated as follows. Before Karuppiah became bankrupt he was in occupation of the premises by virtue of the existence of a contract of tenancy between him and the landlord. On his bankruptcy his rights under the contract passed to the Official Assignee and no interest under the contract remained vested in him. So long as the Official Assignee was the tenant and allowed the bankrupt to remain on the premises the bankrupt was entitled to do so as his licensee. When the Official Assignee disclaimed the tenancy the right to possession passed to the landlord whereupon the bankrupt's right to remain on the premises came to an end and he became a trespasser. I find ample authority for these propositions of law in the judgments of Thomson J. (as he then was) in the cases of *Ramasamy Pillai* v. *Meyappa Chettiar & Anor.* (1) and *Meenachi Sundram & Anor.* v. *Kunjan Pillai* (2), with which I respectfully agree.

The next question which I am called upon to decide is whether the landlord is entitled to possession on this application in these proceedings or whether he should bring a separate action. In this connection sub-section (6) of section 59 of the Bankruptcy Ordinance, 1959, provides as follows:—

> "(6) The court may, on application by any person either claiming any interest in any disclaimed property or under any liability not discharged by this Ordinance in respect of any disclaimed property, and on hearing such persons as it thinks fit, make an order for the vesting of the property in or delivery thereof to any person entitled thereto or to whom it seems just that the same should be delivered by way of compensation for such liability as aforesaid or a trustee for him and on such terms as the court thinks just; and on any such vesting order being made, the property comprised therein shall vest accordingly in the person therein named in that behalf, without any conveyance or assignment for the purpose."

This sub-section is substantially the same as sub-section (6) of section 54 of the English Bankruptcy Act, 1914. In the case of *Re Hyams* (3) it was decided that the court has jurisdiction to make an order for delivery of possession of premises which have been disclaimed by the bankrupt's trustee. It is this order which the applicant seeks and I am of the opinion that sub-section (6) of section 59 of our Bankruptcy Ordinance empowers the Court to make such an order.

It is contended by learned counsel for the bankrupt that the premises here have been the matrimonial home of the bankrupt and his wife and children and that consequently the wife has an equitable interest in the tenancy. He cited the case of *Bendall* v. *McWhirter* (4) as an authority for this proposition. He also cited the cases of *Feris* v. *Weaven* (5), *Short* v. *Short* (6) and *Cobb* v. *Cobb* (7). To my mind those English cases have no application, as they relate to premises occupied by a deserted wife. In any event in this case it is against the bankrupt that the

applicant seeks the order of possession. Although it is not necessary for me to decide the point, I am of the opinion that the right of the bankrupt's wife and children to remain on the premises flows from and is tied up with the bankrupt's right to remain on the premises.

The order of the Court will therefore be that the bankrupt do deliver up vacant possession of the premises to the applicant on or before 31st October, 1962.

Application granted.

Solicitors: *Allen & Gledhill; Richard Talalla.*

YEO THIAM CHYE v. PUBLIC PROSECUTOR

[A. Cr. J. (Adams J.) September 19, 1962]

[Muar — Criminal Appeal No. 24 of 1962]

Criminal Law and Procedure — Evidence of bad character — Deposition by prosecution — Procedure after conviction.

If a person is a known bad character the proper procedure after conviction is for a police officer to go into the witness box and depose on oath that he knows from his own knowledge that the accused is of bad character and the accused must then be given an opportunity to cross-examine the police officer on that point.

CRIMINAL APPEAL.

C. Paramjothy for the appellant.

Syed Agil Barakbah (Deputy Public Prosecutor) for the respondent.

Adams J.: This was an appeal in which Mr. Paramjothy appeared for the appellant who had been sentenced to 6 months' imprisonment for having committed house trespass for the purpose of using criminal force on one of the occupants of the house, an offence punishable under section 451 of the Penal Code.

The facts are somewhat unsavoury. The complainant was at all material times a whore who was carrying on her trade at No. 115 in the back lane of Jalan Meriam, Muar. Apparently she used to be patronised by the accused two or three times a month. The accused said that she had promised to become his permanent mistress but broke all her promises. He alleged that she had cheated him and that he had lost his job as a result of her. The accused came to her room on the 12th May while she was carrying on her business and was occupied with a client. The accused made a disturbance when the client came to leave, slapped the complainant and broke a kerosene lamp, 3 glasses and some tea cups. The police arrived during the commotion.

The accused, who had no previous convictions, is a young man of 29 years of age. Apparently at the end of the case for the defence when the accused was found guilty the prosecuting officer reported that similar troubles had been happening in the area which is a notoriously unsavoury one and there had been many robberies and extortions in that area. It was apparently on this basis the learned Magistrate sentenced the accused to 6 months' imprisonment.

With very great respect there was no evidence whatsoever against the accused that he was of bad character and responsible for the robberies and extortions. If a person is a known bad character the proper procedure after conviction is for a police officer to go into the witness box and depose on oath that he knows from his own knowledge that the accused is of bad character and the accused must then be given an opportunity to cross-examine the police officer on that point.

In my opinion in a case of this nature, unsavoury though the facts may be, the accused who is a first offender could have been adequately dealt with under the provisions of section 294 of the Criminal Procedure Code. I therefore quashed the sentence of imprisonment and substituted an order that the accused be released on his entering into a bond in his own recognizance of $200 and one surety in a similar sum for a period of six months and during such period to appear and receive judgment if and when called upon and in the meantime to keep the peace and be of good behaviour. I also direct that he pay $50 compensation to the complainant.

Accused released on bond.

Solicitors: *Wong & Paramjothy.*

KAN YEOW WING v. KENG SOON MOTOR FINANCE CO.

[O. C. J. (Ong J.) September 21, 1962]

[K.L. — Civil Suit No. 136 of 1961]

Hire-purchase — Agreement — Sale and reletting on hire-purchase — Whether moneylending transaction — Moneylenders Ordinance, s.16.

Bill of Sale — Whether bill of sale void for non-registration — Bills of Sale Ordinance, 1950, s.4(1).

Moneylending — Absence of memorandum — Moneylenders Ordinance, 1951, s.16.

The principles applicable in determining whether a hire-purchase agreement is a bill of sale and therefore void for non-registration are as follows: (1) If a person deliberately, with a clear understanding of what he is doing, and with all appropriate formalities, sells his property to a finance company and then hires it back under a hire-purchase agreement, the agreement is not a bill of sale. (2) If the purpose of the transaction is to enable the hirer to dispose of the property to a customer, the courts will the more readily hold that the agreement is not a bill of sale. (3) If the hire-purchase agreement is a mere device to cloak a loan, the document is a bill of sale. (4) In considering whether the real transaction is one of loan, it is necessary to look behind the document to discover its true nature. (5) If the facts are not truly stated in the document, this is a circumstance tending to show that the document is a mere cloak. *North Central Wagon Finance Co. Ltd.* v. *Brailsford & Anor.* (3) followed.

In this case as the transaction was one of a loan on security rather than a genuine sale and reletting on hire-purchase the plaintiff was entitled to the relief prayed because there was non-registration under the Bills of Sale Ordinance and there was no memorandum of